IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4281 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

KASAMBHAI ALLARAKHBHAI GHANCHI (PANSERIYA) - Petitioner(s)

Versus

ASSISTANT PROVIDENT FUND COMMISSIONER - Respondent(s)

==========

Appearance :

MR VK JOSHI for Petitioner(s) : 1,
NOTICE SERVED for Respondent(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 1,
MR MS RAO for Respondent(s) : 1,

==========

CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 14/09/2005

ORAL JUDGMENT

1. The petitioner, who was serving with Viramgam Textile Mills, which came to be taken over in the year 1974 by National Textile Corporation, had filled in a

form of nomination for PF etc. in the year 1978. In the year 1999, the Voluntary Retirement Scheme was introduced for employees, who had completed 50 years of age. The petitioner, therefore, opted for the scheme and the said benefit was given to him. The problem started when the petitioner was refused pension on the ground that in the year 1999, he had not completed 50 years of age considering his date of birth to be 1.6.1954 as emerging from record of the respondent authorities. The case of the petitioner is that his real date of birth is 14.12.1948 and not 1.6.1954. His further case is that his name is Kasam Allarakha Ghanchi (Panseriya) and not Kasam Allarakha Shaikh. According to him, this mistake has crept in because the form required to be filled-in was in English language and he has studied only upto 4th standard. It is his further case that the mistake has occurred because of issuance of School Leaving Certificate by the School in respect of a different person viz. Kasam Allarakha Shaikh in the year 1977, on basis of which nomination form was filled-in in the year 1978.

2. The respondent authorities have come with a case that in the year 1999, the petitioner had not completed 50 years of age considering his date of birth as

indicated in the School Leaving Certificate annexed to the nomination from in the year 1978 as “1.6.1954”.

3. In affidavit-in-rejoinder, the petitioner has tried to indicate that Kasam Allarakha Shaikh is a different person, who has settled in Ahmedabad; by producing a copy of the electricity bill and ration card of that person.

4. The case of the petitioner is, therefore, based on certain disputes on factual aspects and, therefore, this Court will not dwell on disputed question of fact in exercise of its extraordinary powers under Article 226 of the Constitution of India.

4.1 For deciding the case, the Court will have to examine whether the birth certificate issued by the School in the year 1977 was in respect of a different person, whether the form filled in by the petitioner in the year 1978 was not as per his instructions and against his instructions, whether the petitioner had no knowledge about the date of birth, whether the School Leaving Certificate produced by the petitioner in the year 1999 is genuine, whether the difference in the names is genuine, whether Kasam Allarakha Shaikh was also working in the said mill, whether Kasam Allarakha Shaikh was

also studying in the same School etc. and above all, whether there exist two different persons viz. petitioner & Kasam Allarakha Shaikh. There appears a series of co-incidences claimed to have gone against the petitioner. All these questions cannot be decided in a petition under Article 226 of the Constitution of India. The petition must fail and stands dismissed. Rule is discharged.

(A.L.DAVE,J.)

(vipul)